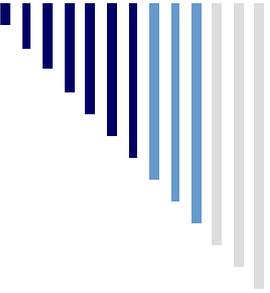


National Society of Tax Professionals

ETHICS: “OUR JOINT RESPONSIBILITY”

Presented by:

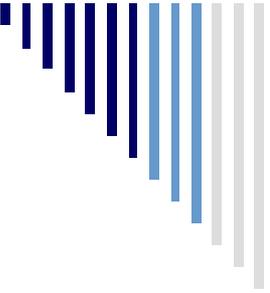
Tom Cooke
Executive Director, NSTP
@2003



SCOPE OF REVIEW

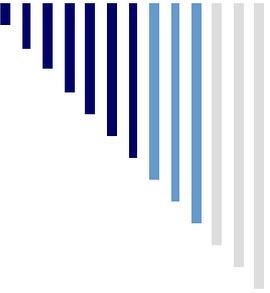
Parts I & II

- 📎 Treasury Circular **230**
- 📎 AICPA Statements on Standards for Tax Services (SSTS)
 - 📎 AICPA Code of Professional Conduct
- 📎 ABA Section of Taxation
- 📎 Tax Code Provisions



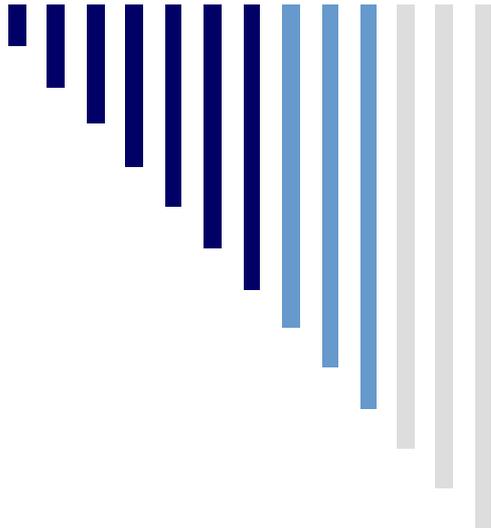
The Challenge: RUDA

- **Recognize** in advance potential ethical issues and dilemmas.
- **Understand** what the relevant tax authorities require.
 - Evaluate the alternatives
- **Design** a framework for analysis.
- **Achieve** a level of comfort.



ETHICS

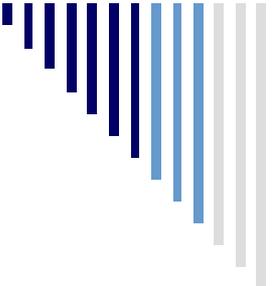
- Taking the time to study and review Treasury Circular 230 and the AICPA Standards can satisfy the requirement facing many tax professionals that the subject of ETHICS and PROFESSIONAL CONDUCT be an ongoing part of their continuing professional education.



CIRCULAR 230

**THE MOST RECENT UPDATES TO
CIRCULAR 230 WERE ISSUED IN
JULY 2002.**

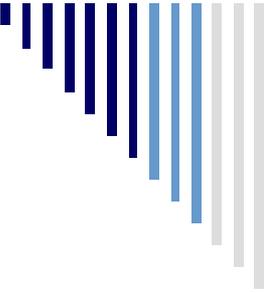
Effective Date: 7/26/02



WHO MAY PRACTICE?

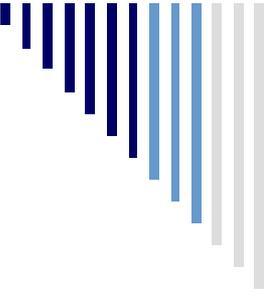
Section 10.3

- ATTORNEYS
- CPAs
- EA's
- ENROLLED ACTUARIES
- OTHERS
- GOVERNMENT
OFFICERS/EMPLOYEES



ENROLLMENT BY EXAM

- The Internal Revenue Service grants the designation EA to those who pass an annual examination consisting of 4 parts.
- Enrolled Agents are subject to reporting requirements and continuing education requirements under Circular **230**.



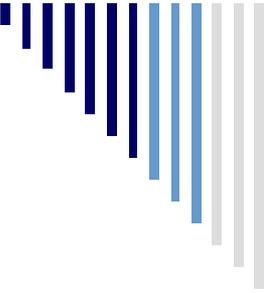
ENROLLMENT RULES

- ENROLLMENT OF FORMER IRS TAX LAW ADMINISTRATION EMPLOYEES
 - * Past service **and** technical experience
 - Section 10.4(b)
 - * ENROLLMENT MAY BE UNLIMITED OR LIMITED
 - Section 10.4(b)(3)

- IRS ISSUES ENROLLMENT CARDS

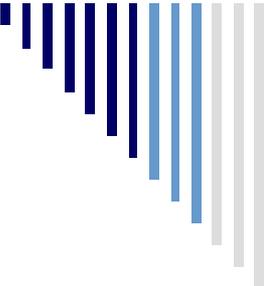
- ENROLLMENT MUST BE RENEWED

- IRS ESTABLISHES CPE RULES



CPE RULES

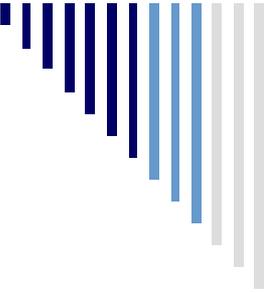
- FOR RENEWALS EFFECTIVE **3/31/04**:
a *minimum* of **16** hours of CPE
must be completed during each calendar
year.
- FOR RENEWALS EFFECTIVE **4/1/07**:
a *minimum* of **72** hours of CPE
must be completed during each
three year period. A *minimum* of
16 hours of CPE, including **2** hours of
ethics or professional conduct, must
be completed in each year.



RENEWED ENROLLMENT EFFECTIVE AFTER 4/1/2007

- AN INDIVIDUAL WHO RECEIVES INITIAL ENROLLMENT DURING AN ENROLLMENT CYCLE MUST COMPLETE 2 HOURS OF QUALIFYING CPE FOR EACH MONTH ENROLLED DURING THE ENROLLMENT CYCLE.

SEE SECTION 10.6(e)(2)(iii)



KEEP YOUR RECORDS

- Each individual applying for renewal **MUST** retain for a period of **3** years following the date of renewal for enrollment the information required with regard to **qualifying CPE credit hours**.
- *What information should you keep?*

Name of sponsoring organization

Location of program

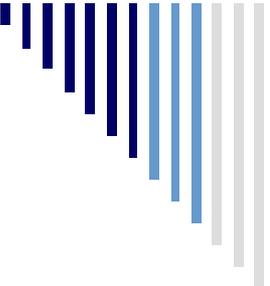
Title of program

Course materials, outlines

Dates attended

Credits earned

Instructor/s

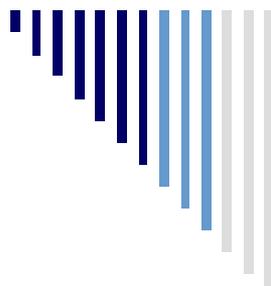


LIMITED PRACTICE

Section 10.7(c)

- Representing a *family* member
- Employee* representing employer
- General partner* representing partnership
- Officer* or full-time employee representing a corporation
- An individual who prepares and signs a taxpayer's tax return as the *preparer**

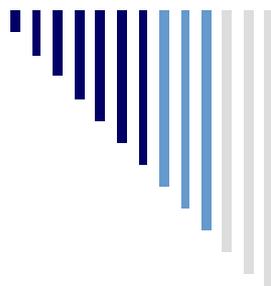
*This is a limited right. See **Section 10.7(c)**
(viii)



“Limited” Practice

10.7(c) (viii)

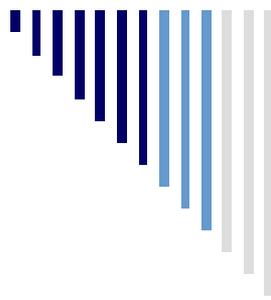
“Any individual who prepares and signs a taxpayer’s return as the preparer, or who prepares a return but is not required to sign the return, may represent the taxpayer before revenue agents, customer service representatives or similar officers and employees of the IRS during an examination of the taxable year or period covered by that tax return...” continued next slide



“Limited” Practice

Continued

“... but, unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before **appeals officers, revenue officers, Counsel or similar officers or employees** of the IRS or the Department of Treasury.”

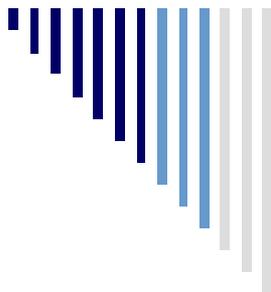


Preparing Tax Returns

Who Can Prepare Tax Returns?

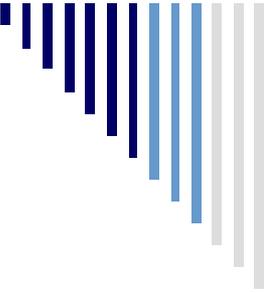
- Section 10.7(e)

“Any individual may **prepare** a tax return, **appear** as a witness for the taxpayer before the IRS, or **furnish** information at the request of the IRS or any of its officers or employees.”



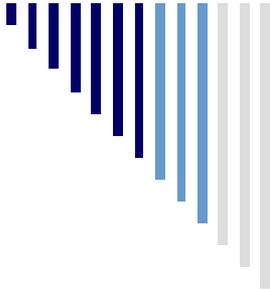
REGULATING THE TAX PROFESSION

- From time to time, support has been expressed for efforts to “regulate” everyone who prepare federal tax returns.
- What are the pros and cons of such a proposal? Do you favor such regulation?



STATE REGULATION OF THE TAX PROFESSION LACKS UNIFORMITY

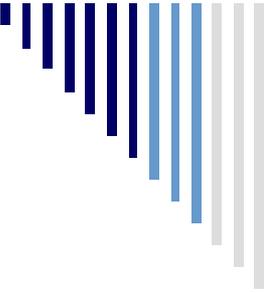
- Some states have enacted “state-based” procedures to regulate just who can prepare state income tax returns.
- *California* and *Oregon* are examples of states that impose significant regulations on preparers.



Section 10.20

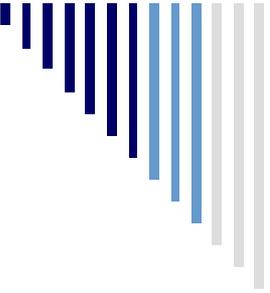
Information to be Furnished

- “A practitioner must, on a proper and lawful request ... promptly submit records or information in any matter before the IRS UNLESS the practitioner believes in **GOOD FAITH** and on **REASONABLE GROUNDS** that the records or information are **PRIVILEGED.**” Section 10.20(a)(1)



WHERE ARE THE RECORDS?

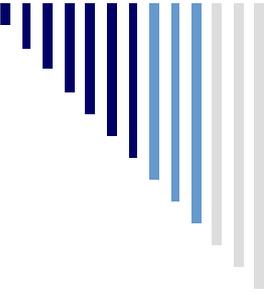
- **Section 10.20 (a)(2) requires the practitioner to provide information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information.**
- **BUT the practitioner is NOT required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.**



KNOWLEDGE OF A CLIENT'S OMISSION

Section 10.21

- Where a practitioner KNOWS that a client has not complied with the revenue laws of the U.S. or has made an error in or omission from any return, document, affidavit, or other paper which the client has submitted or executed ... the practitioner **MUST ADVISE** the client **PROMPTLY** of the fact of such noncompliance, error or omission.



SIDE BAR

- While Section 10.21 does not address the issue, it probably makes sense to notify (advise) the client in WRITING.
- Note that Section 10.21 does state that “the practitioner must advise the client of the **consequences** provided under the Code and regulations of such noncompliance, error, or omission.”



DUE DILIGENCE

- Section 10.22(a) states that “a practitioner must exercise **DUE DILIGENCE** in:

(1) preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to IRS matters

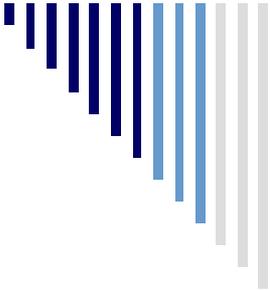
(2) in determining the correctness of oral or written representations made by the practitioner to the IRS and

(3) in determining the correctness of oral or written representations made by the practitioner to clients ...”



10.22 (a) Summary

- Exercise due diligence in:
 - The work **we** do
 - Statements **we** make to the IRS
 - Statements **we** make to clients

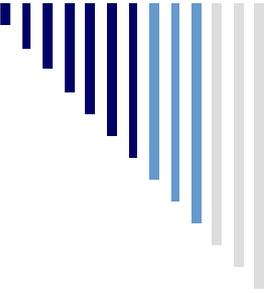


RELIANCE ON OTHERS

Presumption of Due Diligence

- When a practitioner relies on the work product of another person and used reasonable care in engaging, supervising, training, and evaluating the person ... there is a **PRESUMPTION** that the practitioner exercised **DUE DILIGENCE**.

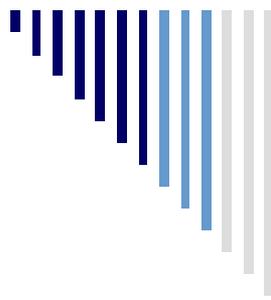
Section 10.22(b)



PROMPT DISPOSITION

- A practitioner may NOT **unreasonably delay** the prompt disposition of any matter before the IRS.

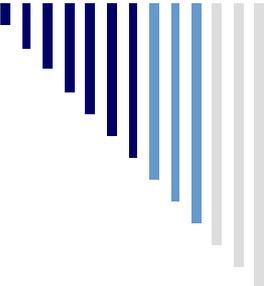
Section 10.23



FEEES

- A practitioner may NOT charge an **unconscionable fee** for representing a client in a matter before the IRS.

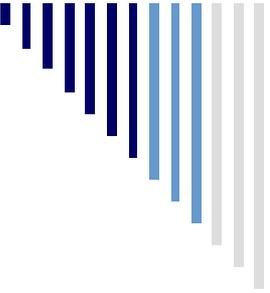
Section 10.27(a)



CONTINGENT FEES NOT ALLOWED

- A practitioner may NOT charge a **contingent fee** for preparing an original tax return or for any advice rendered in connection with a position taken or to be taken on an original tax return.

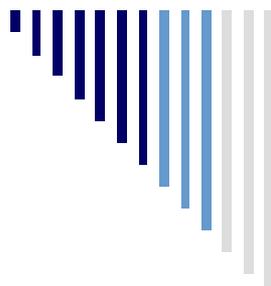
Section 10.27(b)(2)



CONTINGENT FEES ALLOWED

- A **contingent fee** may be charged for preparation of or advice in connection with an **amended tax return or a claim for refund** (other than a claim for refund made on an original tax return), but only if the practitioner **reasonably anticipates** at the time the fee arrangement is entered into that the amended tax return or refund claim will receive **substantive review by the IRS**.

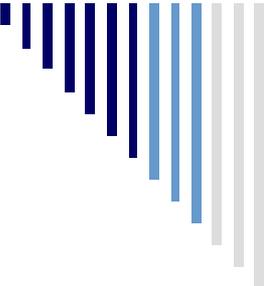
Section 10.27(3)



THE AICPA AND CONTINGENCY FEES

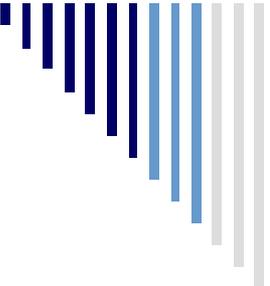
- RULE 302 (Code of Professional Conduct)

“A member shall not prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.”



ABA [Comments by members of a Task Force from the Committees on Standards of Tax Practice and Civil and Criminal Penalties of the Section of Taxation.]

- Published comments from ABA members suggest that Circular 230 makes sense and “allowing contingent fees in such circumstances would appear to increase access to professional advice for persons having claims against the government, without raising incentives for practitioners to encourage participation in the ‘audit lottery.’”

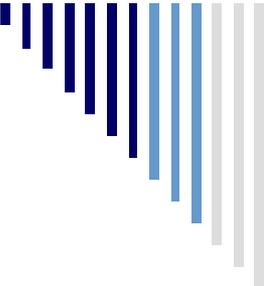


RETURN CLIENT RECORDS

- A practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his/her tax obligations.

* The practitioner may retain **copies** of the records returned to a client.

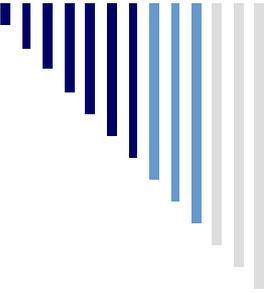
Section 10.28(a)



WHAT IF THERE IS A FEE DISPUTE?

- The existence of a dispute over fees generally does not relieve the practitioner of his/her responsibility to return client records.
- Need to see if state law allows the retention of records in a fee dispute case.

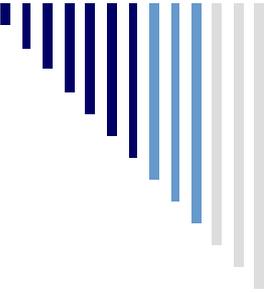
Section 10.28(a)



CONFLICTS

- Except as provided by Section 10.29(b), a practitioner shall not represent a client in his/her practice before the IRS if the representation involves a **conflict of interest**.

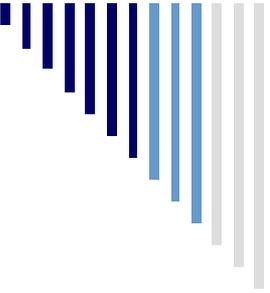
Section 10.29(a)



Section 10.29(b)

- “Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if:
 1. The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;
 2. The representation is not prohibited by law;
 3. **Each affected client gives informed consent, confirmed in writing.”**

NOTE: Keep a copy of the written consent for at least 36 months.



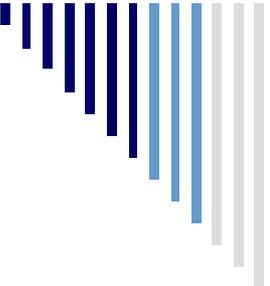
ADVERTISING & SOLICITATION

Circular 230 prohibits the use of any communication or solicitation that contains:

False Statements or Claims

Fraudulent Statements or Claims

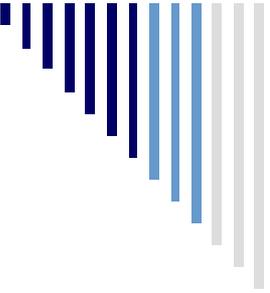
Coercive Statements or Claims



ADVERTISING & SOLICITATION CONTINUED

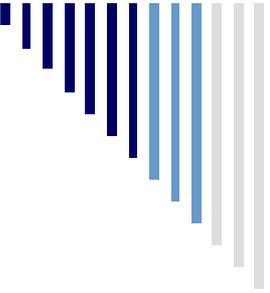
- **Enrolled Agents may not use the term of art “certified” or imply an employer/employee relationship with the IRS.**
- **An EA may say: “enrolled to represent taxpayers before the IRS.” “Enrolled to practice before the IRS.” “Admitted to practice before the IRS.”**

Section 10.30(a)



USE OF THE WORD “LICENSED”

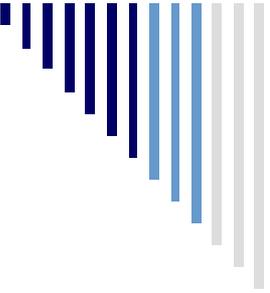
- While Circular 230 clearly states that the word CERTIFIED may not be used by Enrolled Agents it does not prohibit the use of other words such as “LICENSED.”



PUBLISHING FEES

Section 10.30 (b)(1)(i)

- Circular 230 notes that “a practitioner may publish the availability of a written schedule of fees and disseminate the following fee information:**
 - 1. Fixed fees for specific routine services.**
 - 2. Hourly rates**
 - 3. Range of fees for particular services**
 - 4. Fee charged for an initial consultation**



COMMUNICATION OF FEE INFORMATION

- **Fee information may be communicated in professional lists, telephone directories, print media, mailings, electronic mail, facsimile, hand delivered flyers, radio, television, and any other media.**

NOTE: Keep a copy of the actual communication for a period of 36 months.

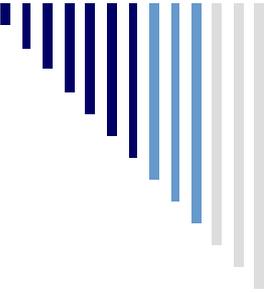
Section 10.30(c)

NEGOTIATION OF TAXPAYER CHECKS

- A practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the government in respect of a Federal tax liability.

See Section 10.31
Note that Code Section 6695(f) provides a \$500 penalty for negotiating refund checks.

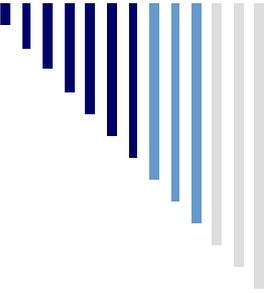




THE PRACTICE OF LAW

- “Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.”

Section 10.32

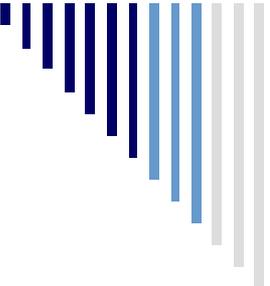


Judge Learned Hand

Commissioner v. Newman

159 F.2nd 848, 850-851 (CA-2, 1947)

“Over and over again, courts have said that there is nothing sinister in so arranging one’s affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced extractions, not voluntary contributions. To demand more in the name of morals is mere cant.”



ETHICS

OUR JOINT RESPONSIBILITY



Thank you for participating in today's Part I review of the important ethical issues facing us as tax professionals.

Part of II of the program will begin in one hour.